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November 23, 1993

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Caton:

Transmitted herewith is an original and four copies of Reply Comments, submitted on behalf of E.F. Johnson Company, in response to initial Comments filed in the Notice of Proposed Rule Making, in General Docket No. 93-252. Copies have been also distributed to the Chief, Land Mobile and Microwave Division, Private Radio Bureau, and to the Chief, Mobile Services Division, Common Carrier Bureau.

If you have any questions regarding this matter, please contact Russell H. Fox of this office, or the undersigned counsel.

Sincerely,

Susan H.R. Jones

Attachment

cc: Richard J. Shiben, Chief, Land Mobile and Microwave Division, PRB
John Cimko, Chief, Mobile Services Division, CCB

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of		
Implementation of Sections 3(n) and 332 of the Communications Act	)	**GN Docket No. 93-252**
Regulatory Treatment of Mobile Services	)	
To: The Commission	)	

REPLY COMMENTS OF THE E.F. JOHNSON COMPANY

The E.F. Johnson Company ("E.F. Johnson" or "the Company"), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission") hereby submits its Reply Comments responsive to the initial Comments of other interested parties that were filed in connection with the Notice of Proposed Rule Making ("NPRM") adopted in the above referenced proceeding[1/] designed to adopt a regulatory structure for mobile communications services, pursuant to Congressional mandate, consistent with newly revised Sections 3(n) and 332 of the Communications Act of 1934 (the "Act").[2/]

[1/]Notice of Proposed Rule Making, GN Docket No. 93-252, FCC 93-454, released October 8, 1993.

[2/]Pub. L. 103-66, Title VI, Section 6002(b), 107 Stat. 312, 392 (1993).

I. INTRODUCTION

On November 8, 1993, E.F. Johnson submitted Comments in this proceeding, primarily addressing two areas. First, the Company urged the Commission to incorporate, as a fundamental element of the "functional equivalency" test for determining which services will be regulated as commercial mobile service providers, the concept of frequency reuse. E.F. Johnson pointed out that frequency reuse provides the basis for the cellular industry's technological advances to date, and when employed in wide area specialized mobile radio ("SMR") systems, can facilitate realistic SMR competition for the cellular market. In addition, the Company urged the Commission to maintain the current ban on the provision of dispatch services by cellular carriers. E.F. Johnson's Comments demonstrated that if the ban were lifted, the large capability service providers would drive the current dispatch providers from the market, eliminating a valuable option for mobile communications customers.

Many other parties submitted initial Comments in this proceeding. Some commenting parties expressed sentiments consistent with those stated by the Company. Others, however, disagreed with the Company, based upon inaccurate interpretations of Congressional directive, or a lack of understanding of the mobile communications environment. In order to correct the data provided to the Commission, and to further develop the record in this proceeding, E.F. Johnson is pleased to have the opportunity to submit the following Reply Comments.

II. REPLY COMMENTS

A. The Definition of Commercial Mobile Service Providers

Several parties argue that the Commission should broadly define Commercial Mobile Service, to include virtually all entities that offer communications service for profit. [3/] This position is directly contrary to Congressional intent. As noted in the Company's initial Comments, Congress specifically anticipated that there would be entities that met the literal definition of the Act (i.e. they provide communications services for profit and make interconnected services available to the public or a substantial portion of the public) that would not be regulated as commercial mobile service providers. Congress stated that: "The Commission may determine, for instance, that a mobile service offered to the public and interconnected with the public switched network [i.e., thereby meeting the statutory definition] is not the functional equivalent of a commercial mobile service if..."[4/] Accordingly, not all entities, despite their apparent inclusion in the commercial mobile service category, should be regulated as such. It is for the Commission to determine the objective factors that justify an entity's inclusion in the commercial mobile service category.

Some commenting parties correctly point out that commercial mobile services should be those that are substitutable for today's common carrier/cellular systems.[5/] E.F. Johnson agrees that the appropriate directive is to regulate "like" services in the same fashion.

[3/] See, Comments of Bell Atlantic Companies; Lower Colorado River Authority; Nextel Communications; Pacific and Nevada Bell.

[4/] H.R. Rep. No. 102-213, 103rd Cong., 1st Sess. (1993), at 496.

[5/] See, Comments of Rochester Telephone at 3.

However, it strongly disagrees with those entities that urge the Commission to determine whether two services are alike, based upon "public perception".[6/] Similarly, it disagrees with those commenting parties that urge the Commission not to rely upon technical definitions to distinguish between commercial mobile service providers and private systems.[7/] The only reliable benchmark for distinguishing between categories of mobile service providers that offer similar services is a technical definition. Any other definition based upon "public perception" is susceptible to uneven application and capricious results. Moreover, the requirement that the Commission determine, in each instance, whether a service is perceived as being substitutable for a common carrier service, will place a burden on Commission resources that it can ill afford to bear.

Accordingly, the Commission should adopt E.F. Johnson's recommendation that the objective criteria of frequency reuse be employed to determine when systems are functionally equivalent. If, as several commenting parties accurately state, the purpose of this proceeding is to ensure that like services are regulated in a consistent fashion, it is illogical to attempt to impose the same set of regulatory requirements on a five channel SMR system and a cellular system operating with over 300 channels. The fact that in some markets, a sucessful SMR operator may create the "public perception" that its service is functionally equivalent to a cellular system is irrelevant to its potential to, through market power, affect competitive conditions. Such market power can only be achieved through

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[6/] See, e.g., Comments of Vanguard Cellular Systems; Sprint Corp.; Telephone and Data System; CTIA; NARUC.

[7/] Bell Atlantic Companies; Rochester Telephone; US West, Inc.; Personal Radio Steering Group, Inc.; Telephone & Data Systems; NYNEX.

channel capacity, evidenced through the employment of frequency reuse.[8/] Common carrier regulation, which will be imposed upon commercial mobile service providers, is appropriate only for entities with market power.

B. Commercial Mobile Service Providers' Ability to Offer Dispatch Services

E.F. Johnson agrees with those parties that state that all commercial mobile service providers, including enhanced SMRs ("ESMRs"), personal communications service ("PCS") licensees and cellular operators should be permitted to offer service on an even playing field.[9/] It is for precisely this reason that commercial mobile service providers should not be permitted to offer dispatch service. Such a modification of the Commission's rules will create an uneven playing field with traditional dispatch providers, who will not be regulated as commercial mobile service providers.

It is inaccurate to suggest, as do some commenting parties, that commercial mobile service providers' ability to offer dispatch service will increase competition and thus improve service to the public.[10/] Competition can only increase if competitors have equal resources. However, traditional dispatch providers and entities that will be regulated as commercial mobile service providers will compete with vastly different resources. As E.F. Johnson

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[8/] E.F. Johnson's recommendations are not technologically based, as several parties suggest. Instead, the employment of frequency reuse strategy is technologically blind. Frequency reuse will be a self-selecting criteria chosen only by those entities with sufficient number of discrete channels to make efficient utilization of the technique. Those entities will necessarily be those with the greatest concentration of frequencies and the ability to affect the marketplace.

[9/] Lower Colorado River Authority; Century Cellunet, Inc..

[10/] GTE Service Corp.; US West, Inc.; PN Cellular, Inc.; Rural Cellular Association; MCI Telecommunications; Utilities Telecommunications Council; New Par; Telocator; NYNEX.

pointed out it its initial Comments, in the immediate term, commercial mobile service providers will likely be able, with excess capacity, to offer inexpensive dispatch service, and to unfairly compete with existing service providers. However, over the long term, commercial mobile service providers will increasingly employ their spectrum for mobile telephone operations. Commercial mobile service providers will, in an effort to maximize their return on their authorized frequencies, increase dispatch rates to those equal to mobile telephone charges. The result will be the elimination of traditional dispatch services, depriving the public of this valuable option. Accordingly, in order to preserve dispatch service, the Commission must continue to preserve the distinction between those systems on which it can be offered, and those upon which it cannot.

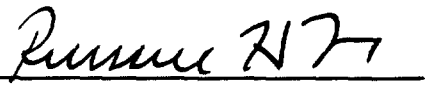
III. CONCLUSIONS

E.F. Johnson believes that the Commission should employ objective criteria, tied to market power, to determine whether a mobile communications provider is a commercial mobile service provider, and thereby subject to a more stringent level of regulation to protect the public. Frequency reuse, which is a reliable indication of market power, should be employed to make that determination. The Company also submits that in order to preserve the dispatch option, commercial mobile service providers cannot be permitted to offer that service on channels designated for commercial mobile service. Provision of dispatch by these entities will not increase competition, but will ultimately have the opposite result-the elimination of a valuable service.

WHEREFORE, THE PREMISES CONSIDERED, the E. F. Johnson Company hereby submits the foregoing Reply Comments and urges the Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

THE E.F. JOHNSON COMPANY

By: 

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Dated: November 23, 1993

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